



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 16 of the Housing (Scotland) Act 2014 (“2014 Act”)

Chamber Ref: FTS/HPC/CV/23/1883

Re: Flat 1/2, 23 Baxter Park Terrace, Dundee, DD4 6NR
 (“the Property”)

Parties:

Hillcrest Enterprises Limited (company number SC621420), 1 Explorer Road, Dundee, DD2 1EG
 (“the Applicant”)

Ms Karen Todd, Flat 1/2, 23 Baxter Park Terrace, Dundee, DD4 6NR
 (“the Respondent”)

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion took place at 2pm on Monday 6 November 2023 by teleconference call (“**the CMD**”). The Applicant was represented by Miss Fiona Browne. The Respondent was not present and was not represented at the CMD. The clerk to the Tribunal was Michael Cowie.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment for £910.93 be granted against the Respondent in favour of the Applicant.

BACKGROUND

1. An application was made to the Tribunal under section 16 of the 2014 Act for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as

amended. More specifically, the application was made in terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment against the Respondent in the sum of £910.93.
3. The application was dated 7 June 2023 and accompanied by various documents, including:
 - a. a rent statement covering the period from 1 April 2022 to 7 June 2023, which stated that:
 - i. there were arrears of £1,456.65 as at 7 June 2023;
 - ii. the monthly rent charge was £437.72; and
 - iii. housing benefit had been being paid at a rate of £336 per month.
 - b. a record with the heading “All contacts and actions” covering a period from 25 April 2011 to 17 May 2023.
 - c. a paper apart which narrated the following:

“The tenant is in receipt of Local Housing Allowance of £336 4 weekly that is paid directly to us as her landlord. This means the tenant is required to cover £73 per month of her rent.

As at 31st May 2023 the account balance is £1,018.93 Arrears, the Local Housing Allowance has paid up to and including 22nd May, we expect we will receive LHA to cover 23rd – 31st May therefore we would like a payment order to cover the arrears £910.93. We would like to engage with the tenant to resolve the arrears and set up monthly shortfall payments. As of 1st August the rent will increase and therefore the amount she is required to pay will increase to £86.13 per month.

We have contacted the tenant regularly by all available methods to try and arrange payment. We have given information on our dedicated Tenancy Sustainment Team who could have offered assistance in applying for Discretionary Housing Payments or other previously available Tenant Hardship Funds. We believe if the tenant worked with them there would be help available that they could source, as they have done for her in the past. Karen has been a tenant of ours for many years so we would like to help her sustain the tenancy and hope that a payment order will encourage her to engage with us.”

4. In response to a request from the Tribunal, the Applicant provided a copy of a short assured tenancy agreement between Northern Housing Co. Ltd (“**Original Landlord**”) and the Respondent dated 18 January 2008 (“**Tenancy Agreement**”), which provided for:
 - a. Rent payable at a rate of £300 per calendar month in advance on the 28th of each month;

- b. A rent deposit of £350; and
 - c. A commencement date of 15 February 2008.
5. A notice of acceptance of the application was issued by the Tribunal dated 14 August 2023 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 7 June 2023 and 1 August 2023.
 6. The Tribunal had received a copy of the certificate of intimation issued by Stephen McCallum (sheriff officer) of Walker Love which confirmed that the letter (in respect of the case with reference FTS/HPC/CV/23/1883) with enclosures from the Tribunal had been served on the Respondent by depositing it in a letterbox at the Property on 29 September 2023.
 7. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

8. The Legal Member was satisfied, on the balance of probabilities, that the Respondent had been given notice of the date and time of the CMD and that it may proceed in her absence.
9. The Legal Member noted that she had been provided with a printout of information from Registers of Scotland which indicated that a disposition (in respect of, inter alia, the Property) had been granted by the Original Landlord to Hillcrest Homes (Scotland) Limited, a registered society under the Co-operative and Community Benefit Societies Act 2014 and a Scottish registered charity (number SC006809) and having its registered office at 1 Explorer Road, Dundee, DD2 1EG. She noted that this was undergoing first registration with the Land Register of Scotland.
10. Miss Browne was asked to explain why the application was made in the name of Hillcrest Enterprises. She explained that the landlord under the Tenancy Agreement was now the Applicant, a minute of lease having been entered into between Hillcrest Homes (Scotland) Limited and the Applicant with a date of entry of 1 April 2021. The Legal Member understood this to mean that this minute of lease had been interposed. Miss Browne was unable to confirm this but confirmed that the Applicant was the Respondent's landlord, the Respondent paid rent to the Applicant and the Applicant in turn paid a rent to Hillcrest Homes (Scotland) Limited.
11. Miss Browne explained that the rent statement was prepared on the basis of "technical arrears" because the housing benefit was calculated on a four-weekly basis, such that there were thirteen (rather than twelve) payments in a year. It was noted that the benefit amount for four weeks was £336 and so the Legal Member calculated that the equivalent amount for one week would be £84 or for one day would be £12.
12. Miss Browne confirmed that, whilst the amount of rent arrears as at 22 May 2023 was £1,018.93, when the anticipated housing benefit payment (for the nine-day

period to 31 May 2023) was taken into account, the amount of rent arrears as at 31 May 2023 was £910.93.

13. Miss Browne confirmed that the rent payable under the Tenancy Agreement, from 1 April 2022 until 31 May 2023, was at the rate of £437.72. She confirmed that the rent under the Tenancy Agreement had been reviewed from time to time (ordinarily annually), upon giving 3 months' notice to the Respondent by reference to the consumer prices index.

FINDINGS IN FACT

14. In the absence of any submissions or evidence to the contrary, the Legal Member was satisfied, on the balance of probabilities, that rent at a rate of £437.72 per calendar month was payable under the Tenancy Agreement in respect of the Property.

REASONS FOR DECISION

15. The Tribunal was satisfied, on the balance of probabilities, that there were arrears of rent to 31 May 2023 which were in the sum of £910.03, which sum was due and had not been paid by the Respondent.
16. Accordingly, the Tribunal found, on the balance of probabilities, that £910.93 was due and payable by the Respondent to the Applicant.

DECISION

17. The Tribunal granted the application under section 16 of the 2014 Act for an order for payment in the sum of £910.93.

Right of Appeal

In terms of Section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

P Woodman

6 November 2023

Legal Member (chair)

Date